

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. LA CV 17-3456 MWF (JCG) Date December 7, 2017

Title *Lloyd Brooks, Jr. v. State of California, et al.*

Present: The Honorable **Jay C. Gandhi, United States Magistrate Judge**

Kristee Hopkins

None Appearing

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

None Appearing

None Appearing

Proceedings: (IN CHAMBERS) ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

I. Introduction

On May 8, 2017, plaintiff Lloyd Brooks, Jr. (“Plaintiff”), a pre-trial detainee at the California Department of State Hospitals, Patton, proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 (“Complaint”) seeking \$50 million in damages. [Dkt. No. 1] The Complaint names two defendants¹: (1) Starbucks, Inc. (“Starbucks”); and (2) the State of California. (Compl. at 2.)

As currently pled, the Complaint warrants dismissal, but Plaintiff shall be afforded leave to amend.

II. Allegations of the Complaint

In the Complaint, Plaintiff makes several allegations for which he seeks \$50 million in damages. (*See id.* at 1.) First, Plaintiff alleges that he was falsely accused of attempting to rape and kidnap a Starbucks employee and was unlawfully detained by private citizens. (*Id.* at 2.) According to Plaintiff, he suffered from pulled out hair and an open wound on his shoulder. (*Id.*) Plaintiff was then transferred to the custody of the Los Angeles Police Department (“LAPD”), where he was falsely imprisoned. (*Id.* at 2-3.) Plaintiff alleges that as a result of the unlawful detention and transfer to LAPD custody, he lost a multi-million dollar music album contract, enrollment from his college, and several other personal belongings. (*Id.* at 3.)

Second, Plaintiff alleges that he received ineffective assistance of counsel for several reasons. Specifically, Plaintiff argues that despite being found competent and healthy by the Medical Board of California, his criminal defense and mental illness defense attorneys improperly challenged his mental

¹ Plaintiff’s caption on the first page of the Complaint names only “State of California” as a defendant. However, the caption on the second page names Starbucks Inc. and the State of California as defendants.

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capacity to stand trial and therefore his “reputation and intent” was attacked. (*Id.* at 4.) Further, Plaintiff argues his counsel was ineffective for failing to consult him through various stages of trial and failing to properly develop the facts. (*Id.*)

Third, Plaintiff brings a “malicious prosecution” claim alleging that Los Angeles County and State of California public officials falsely diagnosed him with mental illnesses which resulted in an “extended imprisonment term.” (*Id.* at 5.)

Fourth, Plaintiff brings a claim resulting from five instances of “[a]ssault, [b]attery, and an attempt at [m]anslaughter” while detained at Wayside Super Max Jail. (*Id.* at 6.) Specifically, Plaintiff alleges that as a result of each of the instances, Plaintiff was either improperly punished, subjected to police harassment, or the officials failed to adequately investigate the incident.

III. Legal Standards

The Prison Litigation Reform Act obligates the Court to review complaints filed by all persons proceeding *in forma pauperis*, and by prisoners seeking redress from governmental entities. See 28 U.S.C. §§ 1915(e)(2), 1915A. Under these provisions, the Court may *sua sponte* dismiss, “at any time,” any prisoner civil rights action and all other *in forma pauperis* complaints which are frivolous or malicious, fail to state a claim, or seek damages from defendants who are immune. *Id.*; see also *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000).

The dismissal for failure to state a claim “can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In making such a determination, a complaint’s allegations must be accepted as true and construed in the light most favorable to the plaintiff. *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1990). However, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. A claim has facial plausibility when the plaintiff pleads enough factual content to allow a court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

IV. The Named Defendants Are Not Subject To Section 1983 Liability

As an initial matter, the Complaint warrants dismissal because the named Defendants are not subject to section 1983 liability.

First, section 1983 claims against the State of California are barred by the Eleventh Amendment. In the absence of a waiver by the state or valid congressional override, “[u]nder the eleventh

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amendment, agencies of the state are immune from private damage actions or suits for injunctive relief brought in federal court.” *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). The State of California has not waived its Eleventh Amendment Immunity with respect to claims brought under section 1983 in federal court. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985). Further, the Supreme Court has held that “§ 1983 was not intended to abrogate a State’s Eleventh Amendment immunity.” *Kentucky v. Graham*, 473 U.S. 159, 169 n. 17 (1985).

Accordingly, Plaintiff’s section 1983 claims against the State of California are dismissed. If Plaintiff chooses to amend the Complaint, he should not name the State of California as a defendant.

Second, Plaintiff’s section 1983 claims against Starbucks are barred because Starbucks is not a state actor. Relief under section 1983 requires “(1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). “[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). A private party may be liable under section 1983 only if that party “is a willful participant in joint action with the State or its agents.” *Dennis v. Sparks*, 449 U.S. 24, 27 (1980).

Bare allegations of joint action will not suffice. *DeGrassi v. City of Glendora*, 207 F.3d 636, 647 (9th Cir. 2000). Rather, a plaintiff must allege facts tending to show the private party acted under color of state law or authority. (*Id.*) Thus, to avoid dismissal, a complaint must state a claim that is “plausible on its face,” meaning that the factual content alleged “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted).

Here, Plaintiff has not even alleged that Starbucks acted under the color of state law. Moreover, the facts presented in the Complaint do not sufficiently allow the Court to infer that Starbucks was a “willful participant” in joint activity with the State or its agents. *See Dennis*, 449 U.S. at 27.

Accordingly, Plaintiff’s section 1983 claims against Starbucks are dismissed. If Plaintiff chooses to amend the Complaint, he should not re-allege claims against Starbucks unless he has a good faith belief that he can satisfy the requirements discussed above.

V. Plaintiff’s Fails To State A Claim Based On The Facts Alleged

A. Unlawful Arrest and False Imprisonment

Plaintiff alleges that he was falsely placed under citizen’s arrest by private citizens and subsequently “falsely imprisoned” by the LAPD. (Compl. at 2-3.) Here, Plaintiff has failed to provide

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any evidence to suggest that the private citizens were state actors. Therefore, he has failed to state a section 1983 claim against the private citizens. *See Dennis*, 449 U.S. at 27.

“A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth Amendment, provided that the arrest was without probable cause or other justification.” *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 918 (9th Cir. 2012) (*en banc*) (citation omitted). Probable cause, in turn, “exists when, under the totality of the circumstances known to the arresting officers ..., a prudent person would believe the suspect had committed a crime.” *Dubner v. City and Cty. of San Francisco*, 266 F.3d 959, 966 (9th Cir. 2001). In making such a determination, a court may “examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (internal citation omitted). The plaintiff bears the burden of proof on the issue of unlawful arrest, and may make a prima facie case simply by showing the arrest was conducted without a valid warrant. *Dubner*, 266 F.3d at 965. Then, “the burden shifts to the defendant to provide some evidence that the arresting officers had probable cause for a warrantless arrest. The plaintiff still has the ultimate burden of proof, but the burden of production falls on the defendant.” (*Id.*)

Here, Plaintiff does not allege that the arrest was conducted without a warrant. Further, although Plaintiff alleges that the citizen’s arrest was without probable cause, he makes no such allegation regarding LAPD’s detention. Indeed, the facts in the Complaint demonstrate that there was justification for Plaintiff’s arrest.

It appears that on June 9, 2016, Plaintiff entered an occupied bathroom at Starbucks and was subsequently placed under citizen’s arrest by private citizens for allegations of attempted rape and kidnapping. (Compl. at 2.) Following the citizen’s arrest, Plaintiff was transferred to LAPD custody. (*Id.*) At Plaintiff’s arraignment, video surveillance footage of the incident was submitted and Plaintiff was ultimately charged with sexual assault, sexual battery, and false imprisonment. (*Id.*) Thus, the video footage of the event would have clearly demonstrated to a prudent person that more than one crime was committed. *See Dubner*, 266 F.3d at 966. As such, Plaintiff’s arrest was justified.

Accordingly, these claims should be dismissed. If Plaintiff chooses to amend the Complaint, he should not re-allege these claims unless he has a good faith belief that he can satisfy the requirements discussed above.

B. Ineffective Assistance of Counsel And Malicious Prosecution

Plaintiff next raises a claim of ineffective assistance of counsel. (Compl. at 4.) Plaintiff is represented by two attorneys, a criminal defense attorney and a mental capacity attorney. (*Id.*) Plaintiff argues that both were ineffective. (*Id.*) Specifically, Plaintiff alleges that he had “all of about ten minutes” to meet with his attorneys and as a result did not have the opportunity to prepare for trial. (*Id.*)

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Further, Plaintiff argues that his counsel did not inform him of his charges or consult him on the preparation for a defense. (*Id.*) Plaintiff also alleges that his counsel did not investigate the facts or research defenses for his case. (*Id.*)

Next, in a claim Plaintiff labeled as “Malicious Prosecution,” Plaintiff challenges the finding of LA County and State of California that Plaintiff suffers from several mental illnesses. (*Id.*) Plaintiff specifically contends that the designation “has subjected him to an extended imprisonment term” and other physical problems. (*Id.*)

Because Plaintiff’s underlying state criminal proceedings are still ongoing, principals of comity and federalism require that this Court abstain from adjudicating these claims.

Under the *Younger* abstention doctrine, federal courts may not, absent extraordinary circumstances, stay or enjoin pending state criminal proceedings. *Younger v. Harris*, 401 U.S. 37, 45-46 (1971); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982) (*Younger* “espouse[d] a strong federal policy against federal-court interference with pending state judicial proceedings.”). “*Younger* principles apply in an action for damages pursuant to 42 U.S.C. § 1983 in which the federal plaintiff brings a constitutional challenge to a state proceeding when that proceeding is ongoing; the state proceeding is of a judicial nature, implicating important state interests; and the federal plaintiff is not barred from litigating his federal constitutional issues in that proceeding.” *Gilbertson v. Albright*, 381 F.3d 965, 984 (9th Cir. 2004).

Here, Plaintiff’s only request for relief is \$50 million in damages. (Compl. at 1.) Further, all of the three *Younger* criteria are satisfied. First, the docket in Plaintiff’s state criminal case, which is available online through the Los Angeles Superior Court website², reveals that a pre-trial hearing has been scheduled for December 11, 2017.

Second, the state criminal trial is of a judicial nature and the State of California undeniably has an important interest in prosecuting those charged with violation of its criminal laws. See *Kelly v. Robinson*, 479 U.S. 36, 49 (1986) (recognizing that “the States’ interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief.” (citing *Younger*, 401 U.S. at 44-45)).

Third, there is no allegation that the state court proceedings do not provide Plaintiff an adequate opportunity to raise his federal constitutional claims related to the ineffectiveness of his representation or the alleged extended sentence resulting from his designation of suffering from mental illnesses. Indeed, “[s]o long as a plaintiff is not barred on procedural or technical grounds from raising alleged

² See <http://www.lacourt.org/criminalcasesummary/ui>, Case No. BA447410; see also *Highland Fifth-Orange Partners, LLC v. Granite State Ins. Co.*, 2013 WL 12125732, at *2 (C.D. Apr. 11, 2013) (“Courts may take judicial notice of court filings that are matters of public record.”).

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constitutional infirmities, it cannot be said that state court review of constitutional claims is inadequate for *Younger* purposes.” *Hanloh v. Hutchens*, 2015 WL 10437754, at *2 (C.D. Cal. Dec. 21, 2015), report and recommendation adopted, 2016 WL 893706 (C.D. Cal. Mar. 7, 2016) (citing *Hansel v. Town Court for Town of Springfield, N.Y.*, 56 F.3d 391, 394 (2d Cir. 1995)); *Commc ’ns Telesystems Int’l v. California Pub. Util. Comm’n*, 196 F.3d 1011, 1020 (9th Cir.1999) (“*Younger* requires only the absence of ‘procedural bars’ to raising a federal claim in the state proceedings.”).

Nevertheless, an exception to *Younger* exists if Plaintiff makes a showing of bad faith, harassment, or some other extraordinary circumstances resulting in irreparable injury. *See Perez v. Ledesma*, 401 U.S. 82, 85 (1971). Plaintiff has not alleged any facts to suggest that an exception applies. Accordingly, the Court finds that abstention is warranted under *Younger*.

C. Plaintiff’s Assault, Battery, and Attempted Manslaughter Claims

Finally, Plaintiff appears to allege that his Eighth Amendment rights were violated while detained at Wayside Super Max Jail. (*Id.* at 6.) Plaintiff illustrates five instances in which he was involved in altercations with other inmates and as a result he was improperly punished, subjected to police harassment, or the officials failed to adequately investigate the incident. (*Id.*)

a. *Plaintiff Fails To Name Specific Defendants*

In order to state a section 1983 claim, Plaintiff must allege that particular defendants personally participated in the alleged rights deprivations. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

Plaintiff’s claims arising from the first four assaults fail because he did not name specific individuals who deprived him of his constitutional rights. Plaintiff merely states that he was subjected to various forms of punishment including, *inter alia*, disciplinary action, abuse of power, excessive force, loss of privileges, and failure by the “[a]uthorities” to investigate an incident. (*See id.*) Accordingly, Plaintiff’s claims arising from the first four assaults warrant dismissal.

Plaintiff’s claims arising from the fifth assault also fail, even though he alleges that the Los Angeles Sheriff’s Department (“LASD”) deprived him on his constitutional rights. (*Id.* at 7.) Specifically, Plaintiff contends that he was assaulted by other inmates and “LASD is seen on camera failing to investigate the incident.” (*Id.*) Plaintiff further alleges that he was punished for the incident with complaints and loss of privileges. (*Id.*) The LASD is a municipal department within the Los Angeles County, and thus is not as a general matter considered a “person” within the meaning of section 1983. *See United States v. Kama*, 394 F.3d 1236, 1239 (9th Cir. 2005) (Ferguson, J. concurring) (“[M]unicipal police departments and bureaus are generally not considered ‘persons’ within the meaning of Section 1983.”) Accordingly, Plaintiff’s claims against LASD warrant dismissal.

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Therefore, the Court finds that Plaintiff has failed to adequately state an Eighth Amendment claim. If Plaintiff chooses to amend the Complaint, he should not re-allege this claim unless he can attribute specific actions to specific defendants.

b. Plaintiff Fails To State A Claim Against Los Angeles County

Plaintiff's claims would fail even if assuming Plaintiff meant to name Los Angeles County as a defendant. Municipalities are "persons" subject to liability under section 1983 where official policy or custom causes a constitutional tort. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978). However, a local government or municipality is not liable under section 1983 for injuries inflicted by its employees or agents. (*Id.*) Thus, a plaintiff must establish that "the action that is alleged to be unconstitutional implements or executes a policy . . . , ordinance, regulation, or decision officially adopted and promulgated by" the municipality, or that the action was "visited pursuant to a governmental 'custom[.]'" *Id.* at 690-691. In other words, a plaintiff must show that "deliberate action[,] attributable to the municipality itself[,] is the 'moving force' behind the plaintiff's deprivation of federal rights." *Board of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 400 (1997).

Here, Plaintiff has not identified any policy, ordinance, or custom of Los Angeles County (or the Los Angeles County Sheriff's Department) that led to a deprivation of Plaintiff's constitutional rights. Indeed, Plaintiff fails to identify any policy, ordinance, or custom *at all* in his Complaint for any purpose. (*See generally* Compl.)

Accordingly, the Court finds that Plaintiff has failed to adequately state an Eighth Amendment claim against Los Angeles County. If Plaintiff chooses to amend the Complaint, he should not re-allege this claim unless he has a good faith belief that he can satisfy the standards discussed above.

VI. Leave to File an Amended Complaint

As the Court cannot conclude at this juncture that amendment to the Complaint would be futile, leave to amend is granted. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

Accordingly, **IT IS ORDERED THAT:**

- 1) Within **30 days of the date of this Order**, Plaintiff may submit a First Amended Complaint to cure the deficiencies discussed above. The Clerk of Court is **DIRECTED TO** mail Plaintiff a court-approved form to use for filing the First Amended Complaint. **If Plaintiff fails to use the court-approved form, the Court may strike the First Amended Complaint and dismiss this action.**

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- 2) If Plaintiff chooses to file a First Amended Complaint, he must comply with Federal Rule of Civil Procedure 8, and contain short, plain statements explaining: (a) the constitutional right Plaintiff believes was violated; (b) the name of the defendant who violated that right; (c) exactly what that defendant did or failed to do; (d) how the action or inaction of that defendant is connected to the violation of Plaintiff's constitutional right; and (e) what specific injury Plaintiff suffered because of that defendant's conduct. *See* Fed. R. Civ. P. 8. If Plaintiff fails to affirmatively link the conduct of the defendant with the specific injury suffered by Plaintiff, the allegation against that defendant will be dismissed for failure to state a claim. Conclusory allegations that a defendant has violated a constitutional right are not acceptable and will be dismissed.
- 3) Plaintiff must clearly designate on the face of the document that it is the "First Amended Complaint," and it must be retyped or rewritten in its entirety on the court-approved form. The First Amended Complaint may not incorporate any part of the Complaint by reference.
- 4) As a rule, any amended complaint supersedes previously filed complaints. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992). Thus, after amendment, the Court will treat the Complaint as nonexistent. *Id.*

IT IS SO ORDERED.

cc: Parties of Record

Initials of Clerk 00 : 00
kh

- a. Parties to this previous lawsuit:
 Plaintiff _____

 Defendants _____

- b. Court _____

- c. Docket or case number _____
- d. Name of judge to whom case was assigned _____
- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____
- f. Issues raised: _____

- g. Approximate date of filing lawsuit: _____
- h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? Yes No
2. Have you filed a grievance concerning the facts relating to your current complaint? Yes No

If your answer is no, explain why not _____

3. Is the grievance procedure completed? Yes No

If your answer is no, explain why not _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff _____
 (print plaintiff's name)

who presently resides at _____
 (mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

 (institution/city where violation occurred)

on (date or dates) _____, _____, _____
(Claim I) (Claim II) (Claim III)

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

2. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

3. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

- a. Parties to this previous lawsuit:
 Plaintiff _____

 Defendants _____

- b. Court _____

- c. Docket or case number _____
- d. Name of judge to whom case was assigned _____
- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____
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 (print plaintiff's name)

who presently resides at _____
 (mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

 (institution/city where violation occurred)

on (date or dates) _____, _____, _____.
(Claim I) (Claim II) (Claim III)

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(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

3. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:
